MEMO

DATE: August 5, 2004

TO: The Regional Council
The Transportation and Communications Committee

FROM: Donald Rhodes, Manager of Government and Public Affairs
Phone: (213) 236-1840 E-Mail: rhodes@scag.ca.gov

SUBJECT: Innovative Financing and Project Delivery

SUMMARY:

At both state and federal levels, SCAG is pursuing legislation to facilitate the use of private financing and expedited project delivery for regional transportation projects, which is germane to SCAG's need for innovative financing as proposed in the Regional Transportation Plan (RTP). Experts in federal tax financing have drafted language for SCAG on TIFIA and tax credit financing; SCAG's Washington representatives are advocating for inclusion of the language in the reauthorization of TEA-21 or S. 1637 (Grassley). SCAG's Sacramento representatives are advocating for the inclusion of SCAG's proposal, the Regional Investment in Goods Movement, Highways, and Transit Act (RIGHT), in a conference report expected when SB 1210 (Torlakson), SB 1793 (McPherson) and AB 3048 (Oropeza) are finalized in a joint conference.

BACKGROUND:

SCAG's adopted 2004 RTP calls for the investment of $62 billion in private financing for regional transportation projects including truck and rail capacity enhancements and Maglev. Working with CALCOG and the California Foundation on the Environment and the Economy (CFEE), a roundtable of transportation leaders, SCAG has advocated proposals to create in legislation the private financing tools necessary to implement the RTP. This memorandum updates members on SCAG's efforts at the state and federal level and briefly explains the legislative changes SCAG seeks.

TIFIA, Tax Credit Equity & Tax Credit Bond

The Transportation Infrastructure Finance Initiative Act (TIFIA) allows the US Department of Transportation to provide direct credit assistance in the form of loans, loan guarantees, or lines of credit to sponsors of major transportation projects. Direct loans reimburse a project sponsor's expenditures for eligible project costs. Loan guarantees and lines of credit provide sources of capital should project revenues fall short of amounts needed to repay commercial project investors. TIFIA credit instruments offer project sponsors an excellent way to boost debt service coverage and enhance senior project obligations at an affordable cost.

Highway, transit, passenger rail, and certain inter-modal projects are eligible to receive TIFIA assistance and both public and private entities may apply for TIFIA assistance. Such entities include state DOTs, local governments, transit agencies, special authorities or districts, railroad companies, and private firms or consortia. The candidate project's eligible costs must reach at least $100 million and must comply with the relevant federal regulations that attach to grant-funded transportation projects of the same type.

The changes SCAG seeks to TIFIA would make developmental grants available to project sponsors to fund the costs of predeployment activities, including environmental studies. SCAG also supports amendments to TIFIA currently included in the Senate version of the reauthorization bill that broadens the definition of eligible projects to include freight projects and that removes the annual limitation on the principal amount of credit support.

In the area of tax credit financing, language has been proposed that would facilitate raising investment capital for goods movement projects through tax credit equity and tax credit bonds. Tax credit equity works in the following manner: Investors contribute two-thirds of project costs with up front capital and receive annual tax credits and the principle at maturity in return. Tax credit bonds, by comparison, would be sold to institutional investors to raise 100% of project costs. A project sponsor would be required to pay the initial one-third non-federal match into a sinking fund.

With the necessary draft language prepared, SCAG's Washington representatives have been working to press these amendments into the TEA-21 reauthorization or the S. 1637 conference committees. However, with congressional progress slowed nearly to a halt in the face of ongoing disagreement about the appropriate funding levels for the reauthorization, progress has been gradual, but consistent and will continue.

Design Build, Design Sequencing and RIGHT

In Sacramento, three bills have advanced, SB 1210 (Torlakson), SB 1793 (McPherson) and AB 3048 (Oropeza), that relate to design build and design sequencing project delivery and public/private partnerships for goods movement project financing.

To capitalize on the expected conferencing-together of SB 1210, SB 1793, and AB 3048, SCAG has proposed a mechanism to speed investment in regional transportation projects. The Regional Investment in Goods Movement, Highways, and Transit Act (RIGHT) would create regional authorities to oversee the planning, design, construction, operation, maintenance, and financing of private sector-financed, user-supported projects.

According to RIGHT, an eligible project's total costs, excluding operations and maintenance, must equal or exceed $100 million and the public funding contribution may not exceed 30% of project costs. Projects must be included in the Regional Transportation Plan and the Regional Transportation Improvement Program and must comply with environmental justice requirements. In entering into agreements with private developers of transportation projects, regional authorities could not preclude the construction or financing of competing public facilities, but could agree to make payments to make up any loss of revenues resulting from the competing facilities.

RIGHT includes environmental streamlining provisions to expedite project delivery. The role of county transportation commissions has also been strengthened in response to their concerns.

SCAG's Sacramento representatives are working with members of the Legislature in the "design-build conference committee" to include RIGHT in their report. To meet the needs of the region, additional dollars beyond current revenue streams must be maximized to increase goods movement and transportation infrastructure for the benefit of Southern California's economy.

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MEMO

DATE: August 5, 2004

TO: The Regional Council
The Transportation and Communications Committee

FROM: Donald Rhodes, Manager of Government and Public Affairs
Phone: (213) 236-1840 E-Mail: rhodes@scag.ca.gov

RE: Update on Tribal Gaming Compacts and Prop 68 & 70

SUMMARY:

Two ballot initiatives on tribal gaming, Propositions 68 and 70, are drafted in a way that, if passed by voters, will void Governor Schwarzenegger's signed compact with the Indian tribes. Transportation stakeholders are concerned about the possibility the signed compact will be negated because its proceeds are to be used to repay amounts borrowed in recent years from dedicated transportation funds to bolster the General Fund. Propositions 68 and 70 do not backfill transportation funds and may merit further consideration by the Regional Council this summer.

BACKGROUND:

In June, Governor Schwarzenegger signed a compact with five Indian tribes authorizing them to operate unlimited numbers of slot machines in exchange for a one-time payment of $1 billion to the State, followed annually with as much as $150 million a year in additional payments. The compact was ratified by the Legislature in AB 687 (Nunez). The compact is a serious concern for transportation stakeholders because the proceeds will be used to repay monies borrowed in recent years from dedicated transportation funding sources like the Traffic Congestion Relief Fund (TCRF), created by Proposition 42 in 2000.

If passed, Propositions 68 and 70 will negate the compact Governor Schwarzenegger recently negotiated. Proposition 68 allows eleven non-tribal racetracks and other gambling establishments who sponsored the initiative to operate 30,000 slot machines and pay 33%, upward of $1 billion, of the revenue to the state. Prop 70, sponsored by the Agua Caliente Band of Cahuilla Indians, calls for the Governor to offer renewable 99-year gaming agreements to Indian tribes with no limits on the number of slot machines. Tribes would pay the state a portion of revenues based on the state's prevailing corporate tax rate, currently 8.84%. Revenues from neither Proposition 68 nor Proposition 70 would be used for transportation purposes, unlike the deal ratified in AB 687.

Reports indicate that sponsors and interested parties, including the Governor, are gearing up to fight for or against the propositions in the fall. The Regional Council may wish to review the propositions this summer in light of its stated policy of support for replenishing and firewalling Proposition 42 funds. Government Affairs will provide updates on the propositions as events arise.

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MEMO

DATE: August 5, 2004

TO: The Regional Council
The Transportation and Communications Committee (TCC)

FROM: Donald Rhodes, Manager of Government and Public Affairs
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SUBJECT: Reauthorization of TEA-21 and Federal Appropriations Update

SUMMARY:

Another two-month extension of TEA-21 is expected prior to the congressional recess on July 23rd. The FY05 Appropriations bill for transportation is expected to be folded into an Omnibus Appropriations Act, as has been done in recent years past. SCAG continues to advocate for a higher rate of return to the states in the reauthorization measure, among other issues, and for the Regional Consensus projects in the appropriations bill.

BACKGROUND:

Following the direction of the Regional Council as expressed in the 2004 Legislative Program and the Southern California Consensus Program for TEA-21, staff has worked to ensure that SCAG related issues are being addressed in the reauthorization of TEA-21 and the federal FY05 Transportation Appropriations bill. This memorandum provides an update to members on both federal measures and SCAG's advocacy efforts on behalf of the region.

Reauthorization of TEA-21

The Transportation Equity Act of the 21st Century (TEA-21) expired September 30, 2003 and has since been extended several times. Its current expiration date is slated for July 30th, a week after the Congress recesses on July 23rd. Most observers believe that the Congress will pass another 60-day, "clean" extension to continue the program until September 30th, the end of the federal fiscal year. An extension would keep open the possibility for a last-minute enactment of the reauthorization bill in September before the congressional and presidential elections. Absent any action in September, Congress may pass yet another short-term extension or may pass a longer-term extension, deferring action until the new Congress takes over next year.

After months of being billions of dollars apart in their respective funding levels with the Senate-passed bill at $318 billion and the House measure at $284 billion, it appeared in recent weeks that negotiators were near agreement. While no official offers were made, the House leadership was reported to support a package of $299 billion in contract authority (including $10 billion in rescissions from prior unobligated balances) and $284 billion in guaranteed obligations. At least part of the Senate conferees were said to be prepared to back $304 billion in contract authority and $290 billion in guaranteed obligations. Further conference committee meetings were postponed, however, and no agreement was reached.

Several issues of concern to SCAG remain unresolved as the result of the congressional delay. Among them is the subject of the overall rate of return to the states, referred to as a state's "takedown," and the adoption of the revised ethanol fuel tax. Under TEA-21, states received a takedown of 93%; however, based on the Senate's proposed reauthorization takedown could drop to 83%. In reference to ethanol fuel tax, there was no mention of the tax in TEA-21. However, the Senate and Administration's versions of the bill look to redirect 2.5 cents of ethanol tax that had been diverted to the General Fund, and staff has worked to ensure the adoption of this change beyond the reauthorization using other legislation. As of this writing, no definitive results have been produced.

On a positive note, the Senate has proposed an increase of .5% for metropolitan planning take-down, the amount MPOs receive of a state's apportionment to conduct their mandated metropolitan planning activities. Under TEA-21, MPOs received 1%. The additional funding is critical in light of the creation of 42 new MPOs since the 2000 Census and the expansion of MPO responsibilities.

SCAG continues to press for a resolution in conference committee of the take-down issue and others via its Washington, D.C. representatives and as part of larger coalitions like the Southern California Consensus Program delegation, the Association of Metropolitan Planning Organizations (AMPO), the National Association of Regional Councils (NARC) and Caltrans.

Federal FY05 Appropriations

Every year, Congress appropriates funds through a number of measures referred to as Appropriations bills. As of this writing on July 22nd, the House Subcommittee on Transportation, Treasury and Related Agencies Appropriations has "marked up" or revised its FY05 Appropriations bill. In total, the bill provides more than $89.9 billion in transportation funding, an increase of $1 billion over the President's request but $495 million below the FY04 level. Discretionary spending has been set at $25.4 billion, $275 million below the President's request and $2.9 billion below the FY04 level.

Transit program spending totals $7.249 billion in the FY05 bill, including $1 billion for new fixed guideway systems, which is down $300 million from last year's allocated levels. The highway spending level, currently marked up at $34.6 billion, is $800 million more than last year's approved levels and an increase of $1 billion above the President's FY05 budget request. **The subcommittee elected to only earmark those New Starts rail projects that have Full Funding Grant Agreements (FFGA) or that are expected to sign an FFGA within the next six months.**

Of the projects listed on the Regional Consensus Appropriations Request list, the only project that received an earmark was the Los Angeles County Metropolitan Transportation Authority Eastside Light Rail Transit Project for $60 million. This is because **no highway projects were earmarked.** It was understood that highway earmarks were to be dealt with at a later time, but as the July 23rd recess date nears, it appears more likely that Congress will roll the transportation appropriations bill into an Omnibus Appropriations Act, as it has the last two years.

As Congress enters the upcoming congressional election season and as the presidential election approaches, there is reason to believe an Omnibus bill will be passed prior to the September adjournment. If not, an Omnibus measure could not be enacted until the return of the Congress in the new year. SCAG is pressing the advancement of the Regional Consensus Appropriations requests and will continue to monitor the progress of the FY05 Appropriations bills closely.

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